



FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36212]

Progressive Rail Incorporated—Continuance in Control Exemption—Clackamas Valley Railway, LLC

Progressive Rail Incorporated (PGR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Clackamas Valley Railway, LLC (CVR), upon CVR's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in Clackamas Valley Railway, LLC—Lease & Operation Exemption with Interchange Commitment—Union Pacific Railroad Co., Docket No. FD 36211. In that proceeding, CVR seeks an exemption under 49 CFR 1150.31 to lease and operate 1.6 miles of railroad line in Clackamas, Or. (the Line), owned by Union Pacific Railroad Company (UP).

The earliest this transaction may be consummated is September 15, 2018 (30 days after the verified notice was filed).

PGR will continue in control of CVR upon CVR's becoming a Class III rail carrier. According to PGR, it owns or operates rail lines in Minnesota, Wisconsin, and Illinois. PGR states that it controls six other Class III railroads that operate in Minnesota,

Missouri, Iowa, North Carolina, Illinois, and California,¹ and that its control of a seventh, the St. Paul & Pacific Railroad, LLC (SPR), is pending.²

PGR states that: (1) the Line to be operated by CVR does not connect with any other railroads in the PGR corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the Line with any other railroad in the PGR corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the proposed transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the

¹ Airlake Terminal Railway Company, LLC; Central Midland Railway Company; Iowa Traction Railway Company; Iowa Southern Railway Company; Piedmont & Northern Railroad LLC; and Chicago Junction Railway Company.

² PGR's exemption authorizing it to continue in control of SPR became effective on August 15, 2018. Progressive Rail—Continuance in Control Exemption—St. Paul & Pac. R.R., FD 36208 (STB served Aug. 1, 2018).

effectiveness of the exemption. Petitions to stay must be filed no later than September 7, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36212, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on PGR's representative, Bradon J. Smith, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208.

According to PGR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting under 49 CFR 1105.8(b).

Board decisions and notices are available on our website at www.stb.gov.

Decided: August 28, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Tammy Lowery,
Clearance Clerk.

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